

STATE OF VERMONT

HUMAN SERVICES BOARD

In re ) Fair Hearing No. M-09/09-509  
 )  
Appeal of )

INTRODUCTION

The petitioner appeals a denial by the Office of Vermont Health Access (OVHA) for payment through Medicaid of a medication prescribed by her physician because it is not an FDA approved drug. The issue is whether the Department's decision is consistent with the regulations regarding coverage of prescription drugs.

FINDINGS OF FACT

1. The petitioner suffers from a medical condition she has not been able to adequately control through standard treatment and medications. Her physician has prescribed "Synteste", a hormone therapy medication.

2. OVHA notified the petitioner that it cannot cover payment for this drug because it is been "unfairly evaluated" by the Federal Food and Drug Administration (FDA) and related agencies as "less than effective" in treating the petitioner's condition.

3. Neither the petitioner nor, apparently, her physician disputes that Syteste is not on the federal approval list. She asks for an exception because her doctor has told her he believes it will work for her, and because alternative treatments have not been effective.

ORDER

The decision of OVHA is affirmed.

REASONS

The Medicaid program specifically excludes coverage for any drug that has been "unfavorably evaluated" or that is not "included or approved for inclusion in the latest edition of official drug compendia." W.A.M. § 7502. This applies also to the Medicaid "exceptions procedure", which does not allow payment for any drug "subject to FDA approval (which) has not been approved". § 7104 (formerly M108). Inasmuch as OVHA's denial of coverage for this non-approved drug is consistent with its regulations, the Board is bound to affirm. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 1000.4D.

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